

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE: TESTOSTERONE REPLACEMENT
THERAPY PRODUCTS LIABILITY
LITIGATION

THIS DOCUMENT RELATES TO:
Keith Parker v. Pfizer Inc. and Pharmacia &
Upjohn Company Inc.
Case Number 1:15-cv-05435

Case No. 1:14-cv-01748
MDL No. 2545

Honorable Matthew F. Kennelly

**DEFENDANTS PFIZER INC. AND PHARMACIA & UPJOHN COMPANY INC.'S
MOTION TO DISMISS WITH PREJUDICE
PURSUANT TO SECOND AMENDED CASE MANAGEMENT ORDER NO. 9**

Pursuant to Second Amended Case Management Order No. 9 (Plaintiff Fact Sheets and Records Authorizations) ("Second Amended CMO 9"), Defendants Pfizer Inc. and Pharmacia & Upjohn Company Inc. ("Pfizer Defendants") hereby move this Court for entry of an Order dismissing with prejudice the claims of Plaintiff Keith Parker ("Plaintiff") for Plaintiff's failure to complete and serve an executed Plaintiff Fact Sheet ("PFS"). As grounds for this motion and as set forth below, Pfizer Defendants state as follows:

1. On June 19, 2015, the Branch Law Firm filed a Complaint on behalf of Plaintiff in this Court and in these MDL proceedings. Plaintiff's Complaint was served on Pfizer Defendants on July 14, 2015.

2. According to Second Amended CMO 9, each plaintiff in a Member Action that is not pending as of March 3, 2015, is obligated to serve and produce a completed and executed PFS to the defendants, along with signed and dated authorizations and all responsive, non-privileged documents requested in the PFS that are in his or her possession or custody, within 80 days from the date their Member Action is filed in or transferred to this Court. *See* Second Amended CMO 9, ¶ V.B.

3. Second Amended CMO 9 defines Member Actions as, among other things, “all related actions originally filed in or removed to this Court”. *Id.* at ¶ I.

4. Second Amended CMO 9 provides that if a plaintiff, whose Member Action was not pending as of March 3, 2015, fails to provide an executed PFS within 80 days from the date their Member Action is filed in or transferred to this Court, the defendants shall send a Warning Letter to that plaintiff’s attorney of record via e-mail, with a courtesy copy to Michelle L. Kranz at Pservice@toledolaw.com on behalf of the PEC. *Id.* at ¶ II.E.1.a.

5. Second Amended CMO 9 also provides that if a plaintiff fails to provide an executed PFS within 45 days of his or her counsel’s receipt of the Warning Letter, the defendants may move the Court for dismissal of that plaintiff’s case with prejudice. *Id.* at ¶ II.E.2.a.

6. Plaintiff failed to serve an executed PFS by September 8, 2015 (within 80 days from the filing of his Complaint). *See* Declaration of Cara D. Edwards, attached hereto as Exhibit A, at ¶ 4.

7. On September 10, 2015, pursuant to Section II.E.1.a. of Second Amended CMO 9, Pfizer Defendants sent a Warning Letter via e-mail to the Branch Law Firm, with a courtesy copy via e-mail to Michelle L. Kranz. *Id.* at ¶ 5.

8. Plaintiff had until October 26, 2015 (45 days after the date of the Warning Letter) to provide the PFS, authorizations, and responsive documents to Pfizer Defendants. This deadline has expired and Pfizer Defendants have not received the requisite PFS, authorizations, and responsive documents. *Id.* at ¶ 6.

WHEREFORE, Pfizer Defendants move this Court for an Order dismissing Plaintiff's action with prejudice.

Dated: October 29, 2015

Respectfully submitted,

/s/ Cara D. Edwards

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*Attorneys for Defendants Pfizer Inc. and
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CERTIFICATE OF SERVICE

I, Cara D. Edwards, hereby certify that on the 29th day of October, 2015, the foregoing Defendants Pfizer Inc. and Pharmacia & Upjohn Company Inc.'s Motion to Dismiss With Prejudice Pursuant to Second Amended Case Management Order No. 9 and the appended Declaration of Cara D. Edwards in Support of Defendants Pfizer Inc. and Pharmacia & Upjohn Company Inc.'s Motion to Dismiss With Prejudice Pursuant to Second Amended Case Management Order No. 9, including the exhibit attached thereto, were filed via the Court's CM/ECF system, which will automatically serve and send notification of such filing to all registered attorneys of record. A courtesy copy was also served via e-mail to Plaintiff's attorney of record, Turner W. Branch at tbranch@branchlawfirm.com and psanchez@branchlawfirm.com, and Michelle L. Kranz at Pservice@toledolaw.com on behalf of the PSC.

/s/ Cara D. Edwards

Cara D. Edwards